

STATE OF WISCONSIN

CIRCUIT COURT

WINNEBAGO COUNTY

CITY OF MENASHA, WISCONSIN
140 Main Street
Menasha, WI 54952-3151,

Plaintiff,

v.

VILLAGE OF FOX CROSSING, WISCONSIN
2000 Municipal Drive
Neenah, WI 54956,

TOWN OF MENASHA
2000 Municipal Drive
Neenah, WI 54956,

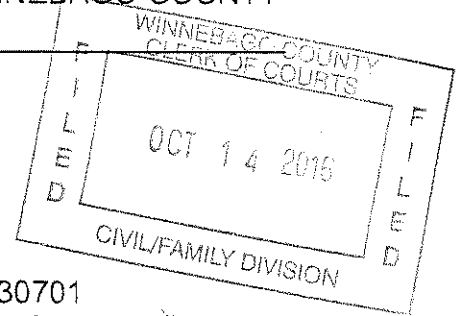
Defendants.

Case No.:

Case Code: 30701

16CV 983 BR3

COMPLAINT



The above-named plaintiff, City of Menasha, by its City Attorney, Pamela A. Captain, hereby asserts a Complaint, pursuant to Wis. Stat. § 66.0301(6) and 806.04 challenging the validity of an intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing. The City of Menasha alleges as follows:

PARTIES

1. Plaintiff City of Menasha ("City" or "City of Menasha") is a Wisconsin municipal corporation with its principal offices at 140 Main Street, Menasha, Wisconsin.

2. Defendant, Village of Fox Crossing, is a Wisconsin municipal corporation with its principal offices at 2000 Municipal Drive in the Village of Fox Crossing, Winnebago County, Wisconsin.

3. Defendant, Town of Menasha, is a Wisconsin town with its principal offices at 2000 Municipal Drive in the Village of Fox Crossing, Winnebago County, Wisconsin.

JURISDICTION AND VENUE

4. Winnebago County Circuit Court has jurisdiction over the subject matter of this proceeding and is a proper venue for this action.

GENERAL ALLEGATIONS

5. The City of Menasha and Town of Menasha are parties to an Intermunicipal Agreement dated April 13, 1998, a copy of which is incorporated herein and attached hereto as Exhibit A.

6. The Intermunicipal Agreement establishes boundaries and facilitates orderly development for the City of Menasha and Town of Menasha, and sets restrictions with respect to such things as annexation and incorporation.

7. The Intermunicipal Agreement at paragraph 2 provides, in pertinent part, "A boundary line shall be fixed east of Little Lake Butte des Morts at STH 441. This boundary line is the result of significant negotiation..."

8. On or about April 20, 2016, a portion of the lands that were formerly located in the Town of Menasha were incorporated into the Village of Fox Crossing. The territory of incorporation was outside the boundary line fixed by the Intermunicipal Agreement between the City of Menasha and Town of Menasha.

9. On August 17, 2016, the Town of Menasha entered into a second intergovernmental agreement. Provisions of that agreement affect some of the same boundaries affected by the April 13, 1998 Intermunicipal Agreement, but with a different municipality, the Village of Fox Crossing. A copy of the second intergovernmental agreement is incorporated herein and attached hereto as Exhibit B.

10. On September 16, 2016, a Petition for Annexation of a parcel in the Town of Menasha was filed with the City of Menasha, a copy of which is incorporated herein and attached as Exhibit C.

11. On information and belief, on September 22, 2016, the Village of Fox Crossing adopted ordinance #160922-1: **Amend Village of Fox Crossing Municipal Code Chapter 1 Composition and Duties of General Government by Adding Chapter 1.13 Ordinance to Accomplish Boundary Line Change Referenced in Intergovernmental Cooperation Agreement Entered into on August 17, 2016.**

12. Territory that the Town and Village included in their August 17, 2016 intergovernmental agreement lies within the area set forth in the Town and City of Menasha April 13, 1998 Intermunicipal Agreement.

13. The September 16, 2016 annexation petition affects territory that lies within the City of Menasha growth area set forth in the Town and City of Menasha April 13, 1998 Intermunicipal Agreement.

14. The City of Menasha has spent hundreds of thousands of dollars on backbone water and sewer infrastructure, design of subdivisions, construction of park and recreation facilities, roads, and electric utility in reliance on the Intermunicipal Agreement and the designated boundaries.

15. As a result of the August 17, 2016 intergovernmental agreement, the City of Menasha is unable to fully utilize its growth area as the same area cannot become City of Menasha territory.

16. The City of Menasha owns property affected by and described within the August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing.

17. The City of Menasha owns property affected by and described within the ordinance adopted by the Village of Fox Crossing changing boundaries.

18. The August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing leaves an unviable remainder of the Town of Menasha.

19. The August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing effectively dissolves the Town.

CLAIMS FOR RELIEF

1. Plaintiff City of Menasha herein incorporates paragraphs 1 through 20.

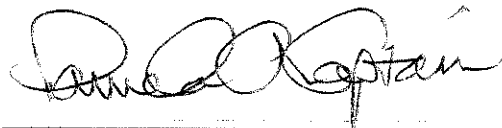
2. Plaintiff City of Menasha requests a declaratory judgment declaring invalid and ultra vires the August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing.

3. Plaintiff City of Menasha requests judgment pursuant to Wis. Stats. §66.0301(6) that the August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing is invalid and ultra vires.

4. Alternatively, Plaintiff City of Menasha requests judgment that the August 17, 2016 intergovernmental agreement between the Town of Menasha and the Village of Fox Crossing is ineffective until after the expiration of the April 13, 1998 Intermunicipal Agreement between the Town of Menasha and the City of Menasha.

5. Plaintiff City of Menasha prays for judgment against the Defendants along with such other and further relief as the Court deems just and equitable.

Signed this 30th day of September, 2016.



Pamela A. Captain
City Attorney for the City of Menasha
SBN: 1023192

140 Main Street
Menasha, Wisconsin 54952
(920) 967-3608 (920) 967-5273 fax
pcaptain@ci.menasha.wi.us

Exhibit A

INTERMUNICIPAL AGREEMENT BETWEEN THE CITY OF MENASHA AND TOWN OF MENASHA

1. Preamble

The Town of Menasha (Town) and the City of Menasha (City), pursuant to sec. 66.30 and 66.027 Wis. Stats., desire to enter into an Intermunicipal Agreement in order to:

- A. Establish fixed boundaries;
- B. Facilitate orderly development of the Town and the City;
- C. Eliminate current and minimize future litigation;
- D. Provide for cost effective governmental services to citizens of the Town and City;
- E. Establish a Town Utility District (District) ;
- F. Promote harmony between the municipalities.

2. Boundaries

A boundary line shall be fixed east of Little Lake Buttes des Morts at STH 441. This boundary line is the result of significant negotiation. The City shall not annex any territory from the Town that is situated north or west of STH 441 without the consent of the Town Board. The City may annex without Town objection any property south and east of STH 441 subject to the conditions as described in paragraph #4 of this Agreement. A map will be prepared as Exhibit A and incorporated into this Agreement. Unless otherwise agreed to by the parties, it is intended that the boundary shall be the north right-of-way line of STH 441. The City shall not annex any Town property north or west of Little Lake Buttes des Morts

3. Current Bonkoski Annexation

- a. The Town shall withdraw all challenges to the pending annexation known as the Bonkoski Annexation.
- b. The Town shall dismiss its challenge in *Town of Menasha v. City of Menasha*, case no. 98 CV 206 with prejudice and without costs.
- c. The Town shall concede to judgment in favor of the City invalidating a referendum held on January 27, 1998 in *City of Menasha v. Town of Menasha*, case no. 98 CV 235 without costs.
- d. The City shall detach property owned by the Town or Town of Menasha Sanitary District #4 from the Bonkoski annexation within 120 days from the date of the signing of this Agreement.
- e. The City has paid to the Town under protest taxes for the property in the Town purchased by the City from Kenneth Bonkoski in 1997 for tax years 1996 and 1997. The

parties agree that there is a substantial and material dispute as to whether there were additional taxes owed for the year 1996 and as to whether the amount assessed for 1997 is accurate. Recognizing that this dispute will not be determined on the merits, the parties agree to a refund from the Town to the City in the amount of \$14,725.80.

f. The parties agree that the annexation ordinance O - 36 - 97 does not include any portion of the property owned by Warren Boyson at the southeast corner of Midway Road and Appleton Road.

4. Annexations South and East of the Boundary Line

a. No Town residents/electors shall have their property south and east of the boundary line included in any annexation petition accepted by the City without the residents'/electors' consent. Additionally, no annexation may occur unless a simultaneous detachment of property occurs whose approximate value is equal to the value of the annexed area. For purposes of this provision, "approximate value" shall be defined as a value within 20% of the equalized assessed value of the other property. Once all residential property north and west of the boundary line has been detached, this provision shall become null and void. The Town Board and the Common Council may waive this provision with mutual consent for any specific annexation or detachment.

b. No improved property south and east of the boundary line may be included in any annexation unless property north and west of the boundary line is simultaneously detached whose approximate value is equal to the value of the annexed area. For purposes of this provision, "approximate value" shall be defined as a value within 20% of the equalized assessed value of the other property. Once all improved property north and west of the boundary line has been detached, this provision shall become null and void. The Town Board and the Common Council may waive this provision with mutual consent for any specific annexation or detachment. The Town and City agree to cooperate with one another to accomplish the terms of this agreement. Once all commercial property north and west of the boundary line have been detached, this provision shall become null and void. The Town Board and Common Council may waive this provision for any specific annexation or detachment.

c. To facilitate annexations south and east and detachments north and west of the boundary line, the Town agrees that the City may use the provisions of sec. 66.021 (2)

(a). The Town agrees to sign a petition for annexation including land owned by the Town, the District, or Town of Menasha Sanitary District #4 when necessary to facilitate the annexation/detachment provisions of this agreement.

d. The City may annex consistent with existing state law any unimproved property south and east of the boundary line.

e. It is understood that annexations as a result of this agreement may result in "Town islands" or City islands". The parties agree that these resultant islands may exist without

challenge since their existence is a necessary part of the agreement so as to facilitate a permanent boundary line between the parties.

f. Neither the Town, the Utility District, nor Sanitary District #4 will judicially oppose nor financially support any judicial opposition to any annexation made in accordance with the terms of this agreement. The City agrees that it will meet with the Town prior to the filing of any annexation petition to discuss matters of mutual concern. If the Town, the Utility District, or Sanitary District #4 is impleaded in any annexation lawsuit by a party other than the City, the Town, Utility District or Sanitary District #4 will immediately stipulate that it does not contest the annexation.

5. Detachments North and West of the Boundary Line

a. No City residents/electors shall have their property north and west of the boundary line included in any detachment petition accepted by the Town without the residents'/electors' consent. Additionally, no annexation may occur unless a simultaneous detachment of property occurs whose approximate value is equal to the value of the annexed area. For purposes of this provision, "approximate value" shall be defined as a value within 20% of the equalized assessed value of the other property. Once all residential property north and west of the boundary line has been detached, this provision shall become null and void. The Town Board and the Common Council may waive this provision with mutual consent for any specific annexation or detachment.

b. No improved property north and west of the boundary line will be included in any detachment unless property south and east of the boundary line is simultaneously annexed. For purposes of this provision, "approximate value" shall be defined as a value within 20% of the equalized assessed value of the other property. Once all improved property north and west of the boundary line has been detached, this provision shall become null and void. The Town Board and the Common Council may waive this provision with mutual consent for any specific annexation or detachment. The Town and City agree to cooperate with one another to accomplish the terms of this agreement. Once all commercial property north and west of the boundary line have been detached, this provision shall become null and void. The Town Board and Common Council may waive this provision for any specific annexation or detachment.

c. It is understood that annexations as a result of this agreement may result in "Town islands" or City islands". The parties agree that these resultant islands may exist without challenge since their existence is a necessary part of the agreement so as to facilitate a permanent boundary line between the parties.

d. The City will not oppose nor financially support any judicial opposition to any detachment made in accordance with the terms of this agreement. The Town agrees that it will meet with the City prior to or shortly after the filing of any detachment petition to discuss matters of mutual concern. If the City is impleaded in any annexation

lawsuit by a party other than the Town, Utility District or Sanitary District #4, the City will immediately stipulate that it does not oppose the detachment.

e. The area of the City of Menasha which is located north of STH 441 and east of Appleton Road, commonly referred to as the "Alcan" area is excluded from the terms of this agreement by virtue of previous intermunicipal agreement between the City of Menasha and the City of Appleton. Should the Town strike an agreement with the City of Appleton as to this area, the City of Menasha agrees to honor any such agreement.

6. Pool Passes

Town residents have been historically able to purchase season pool passes for use at the City's municipal pool. This service was discontinued in 1998. Beginning with this agreement, Town residents will be able to purchase pool passes for use at the City's municipal pool. The cost for Town residents will be the same as for City residents except that the City may require up to a 10% surcharge.

7. Further Agreements

The Town and the City will enter into any further agreements necessary to fulfill the intent of this agreement as well as to provide service to any Town or City "islands" which may be created. The Town and the City acknowledge that in order to facilitate this agreement, it may be necessary to obtain the consent, cooperation, or approval of other governmental and quasi-governmental agencies. In all these matters, the City and the Town agree that they will cooperate to obtain consent, cooperation or approval of these other entities. To such extent practicable, the parties will submit joint requests or other documentation to obtain such approvals.

8. Town Utility District

The City and the Town agree to the dissolution of Sanitary District #4 and the creation of a Town Utility District. The separate agreement creating the Town Utility district is attached as Exhibit B and is part of this agreement. The legal description comprising that territory to constitute the Town Utility District is marked as Exhibit C and is part of this agreement. The Town agrees that if it forms a Town Utility District that no tax levy will be imposed on any City residents within the Town Utility District for any purposes other than are authorized by sec. 60.77 Wis. Stats. for a Town Sanitary District.

9. Sanitary Sewer and Water Service

The Town agrees that either the Town Utility district or Sanitary District #4 will provide sanitary sewer and water service to any City property lying within the service area of the Town Utility district or Sanitary District #4 upon request. No charges will be made for any service so requested that are different from any charges which would be levied if the property were not within the City.

10. Amendments

This agreement may be amended from time to time by mutual agreement. No amendments will be valid until such time as the amendments are authorized by the governing bodies of the City of Menasha and the Town of Menasha and executed in writing. The Town and the City agree that each will entertain any requests for amendments by the other and make a decision as to the amendment within 90 days of the receipt of the notice of the request for the amendment.

11. Notices

All notices required by this agreement must be served personally, or by certified mail upon the respective municipal clerks. All petitions for annexation or detachment shall be forwarded from the party receiving it to the other party as soon as possible.

12. Miscellaneous

a. It is contemplated that the municipalities will rely on sec. 66.30 and 66.028 Wis. Stats., as statutory authority for this Boundary Agreement. The agreement shall be binding upon future Town Boards and City Councils and shall remain in effect until November 2, 2018. This Agreement may be extended by the approval of the City Common Council and the Town Board at any time. It is the intent of the parties that no statutory amendments, changes in the forms of government of the Town or the City nor changes in the elected officials shall affect the enforceability of the agreement.

b. This Agreement is intended to be solely between Town and City and nothing in this Agreement accords any third party any legal or equitable right whatsoever which may be enforced by any non-party to this Agreement.

c. If any portion of this Agreement is deemed to be invalid or unconstitutional, it shall not invalidate the balance of the Agreement not affected by that determination.

d. The Agreement imposes a duty of good faith and fair dealing on all parties.

e. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement. No agreements, promises, nor representations made by either party during the negotiations for or approval of this agreement shall be binding or effective unless included, except that the negotiating parties, i.e. Mayor Joseph Laux and City Attorney Jeffrey Brandt for the City and Town Chairman Arden Tews, Town Administrator Bogdan Vitas, Town Attorney John Claypool, and Town Planner George Dearborn agree that each of them will recommend this agreement to the City Council and Town Board for approval. The parties shall jointly pursue the option of having this agreement ratified pursuant to the procedures set forth in sec. 66.023 Wis. Stats.

f. This Agreement may be entered into evidence by either party without objection in any action to enforce the terms of this Agreement.

g. The failure of any party to require strict compliance with any provision of this Agreement shall not constitute a waiver of the provisions of the Agreement nor any of the parties' rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing signed by the party waiving that right or obligation. Waiver or modification of one term will not constitute a waiver of any other term.

h. This Agreement shall be liberally construed to accomplish its intent. The parties agree that each has been involved in the drafting of this Agreement so that no ambiguity shall be held against either party simply as drafter.

Dated this 13 day of April, 1998.

CITY OF MENASHA:


Joseph F. Laux, Mayor



Joan Smogoleski, City Clerk

Approved as to form:


Jeffrey S. Brandt
City Attorney

TOWN OF MENASHA:


Arden Tews, Chairman


Carlene Sprague, Town Clerk


Bogdan Vitas, Town Administrator

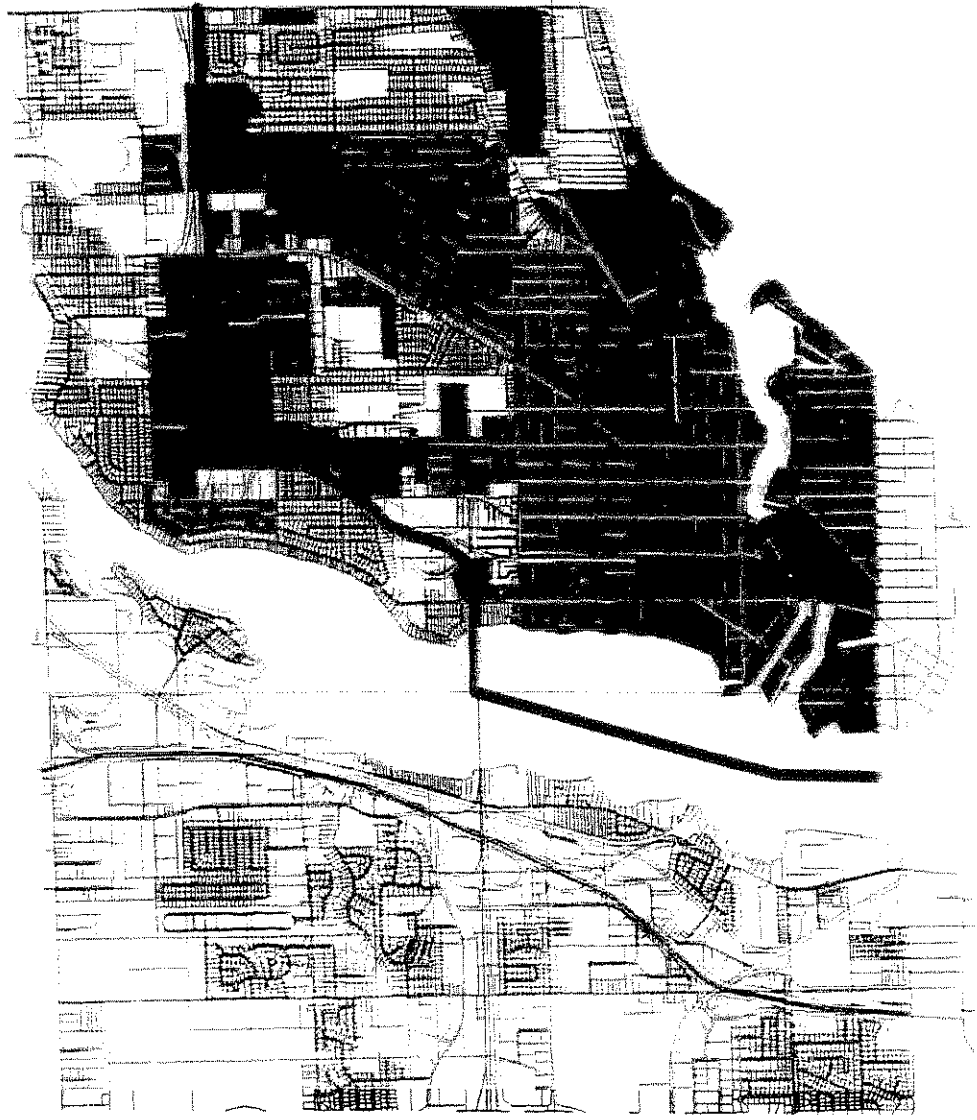
Approved as to form:


John D. Claypool
Town Attorney

Town of Menasha & City of Menasha

Border Agreement

Exhibit A



City of Menasha
Street
Parcel

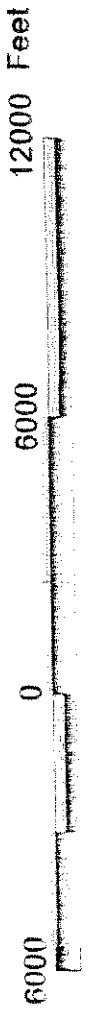
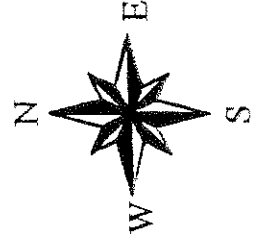


Exhibit B

INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN VILLAGE OF FOX CROSSING AND TOWN OF MENASHA

The Parties to this Intergovernmental Cooperation Agreement (hereinafter "Agreement") are the Village of Fox Crossing (hereinafter the "Village") and the Town of Menasha (hereinafter the "Town").

RECITALS

WHEREAS, on or about April 20, 2016, the Secretary of Administration for the State of Wisconsin issued an incorporation certificate, recognizing the Village as an independent Wisconsin municipality consisting of lands that were formerly located in the Town of Menasha; and,

WHEREAS, the Town provided municipal services to the property owners and residents of the Town prior to the incorporation of said Village; and,

WHEREAS, following said incorporation, the Town and the Village entered into a "status quo" agreement, which was a temporary agreement, designed to ensure the seamless transition of former Town lands to the Village and the continuation of services throughout the Town and Village until a more formal agreement could be reached; and,

WHEREAS, this Agreement is designed to replace the "status quo" agreement; and,

WHEREAS, in order to continue the adequate provision of said services on a cost-effective basis, the Town and Village wish to enter into an agreement whereby the Town will continue to provide some municipal services for the benefit of the Town and the Village for a time; whereby the Village will provide municipal services for the benefit of the Town and Village, and the Town and Village will share the costs of said services; and,

WHEREAS, since incorporation, Town residents have overwhelmingly expressed their desire to reunite with the Village, and many Town residents have expressed their fear of being "left behind"; and,

WHEREAS, the Village and Town believe that the Town could exist in its present size in perpetuity; however, previous third-party annexations have substantially reduced the size of the Town, and the Town Board and Village Board recognize that future third-party annexations would eventually reduce the Town's land to a point where it cannot function independently; and,

WHEREAS, the Town and the Village wish to change the boundary line separating the Town and the Village, so that the major portion of the Town (identified herein) transfers jurisdiction to the Village, and that a small portion of the Town remains under the jurisdiction of the Town for a period of time; and,

WHEREAS, the Town is a signatory to a certain "Intermunicipal Agreement Between the City of Menasha and the Town of Menasha" dated April 13, 1999 (hereinafter the "City of Menasha Boundary Agreement") wherein the City of Menasha agreed not to annex portions of

the Town outside of a certain identified growth area and the Town agreed not to challenge any annexation by the City of Menasha of territory located within said identified growth area; and,

WHEREAS, the Town is a signatory to a certain "Agreement Town of Menasha City of Appleton" dated August 18, 1999 (hereinafter the "City of Appleton Boundary Agreement") wherein the City of Appleton agreed not to annex portions of the Town outside of a certain identified growth area and the Town agreed not to challenge any annexation by the City of Appleton of territory located within said identified growth area; and

WHEREAS, there remains unannexed territory located in the City of Appleton designated growth area and City of Menasha designated growth area, respectively; and,

WHEREAS, the jurisdictional transfer of land from the Town to the Village contemplated by this Agreement would not violate any provision of the City of Menasha Boundary Agreement or the City of Appleton Boundary Agreement because the Village is not a party to either agreement and because neither agreement requires the Town to preserve said designated growth areas or to protect said designated growth areas from other third-party municipalities' annexations or attachments; and,

WHEREAS, notwithstanding the forgoing, in an effort to peacefully coexist with the Town's and Village's municipal neighbors, Town officials contacted governmental officials employed or elected by the City of Appleton and the City of Menasha, respectively, to determine whether either city was interested in annexing any additional land within their respective growth areas prior to or contemporaneously with the jurisdictional transfers contemplated in the Agreement; and,

WHEREAS, the City of Appleton expressed interest in annexing territory of the Town within Appleton's designated growth area in an effort to straighten Appleton's boundaries, but, as of August 16, 2016, was not able to identify any specific territory that Appleton could commit to annex in the near future; and,

WHEREAS, notwithstanding any boundary change authorized by this Agreement, the Town Board and Village Board wish to continue discussions with the City of Appleton in an effort to straighten the Town's and/or the Village's common boundary with the City of Appleton at some point in the near future via means outside of this Agreement; and,

WHEREAS, the City of Menasha did not respond to the Town's invitation to discuss territory that the City of Menasha would commit to annex until the week leading up to this Agreement and, as of August 16, 2016, has still not identified any specific territory that it would commit to annex; and,

WHEREAS, an individual property owner by the name of Positive Ventures, LLC contacted Village officials and asked that said property not be included in the jurisdictional transfer from the Town to the Village so that he may have an opportunity to annex into the City of Menasha; accordingly the Town Board and Village Board wish to leave said territory as a Town remnant for a limited period of time to allow the City of Menasha time to annex said territory; accordingly said territory will not be a part of the jurisdictional transfer contemplated by this Agreement; and,

WHEREAS, no jurisdictional change will occur for at least 30 days after this Agreement is signed by the Town and the Village and a Town remnant will likely remain even after any jurisdictional change occurs, so it is imperative that this Agreement also address operational issues going forward, such as shared governance, apportionment of assets, revenues, costs, and liabilities, and the provision of services to residents and property owners of the Town and Village; and,

WHEREAS, Wisconsin statute §66.0235 requires the Town and Village to apportion assets and liabilities as a result of the recent incorporation of the Village and further apportionment will be required in accordance with the boundary adjustments detailed in this Agreement; and,

WHEREAS, the Town and Village wish to establish rules and procedures for said apportionment in the context of this Agreement; and,

WHEREAS, Wisconsin statute §66.0301 allows municipalities to cooperate and contract in a binding fashion for the receipt and furnishing of services, for the joint exercise of powers or duties required or authorized by law, for the apportionment of expenses involved, for the adjustment of boundary lines, and for the exercise of other duties and rights as stated in §66.0301; and,

WHEREAS, a joint public hearing was held on this proposed Agreement on Wednesday, August 17, 2016, and said public hearing was noticed in accordance with Wisconsin Statutes §66.0301(6)(c).

NOW THEREFORE, the Town and Village hereby enter into an Intergovernmental Cooperation Agreement pursuant to the authority granted to them by Wisconsin statutes §66.0301, and the following terms shall apply:

I. **Term of Agreement.** The Term of this Agreement shall be ten (10) years from the Effective Date unless the Town is dissolved for any reason sooner, in which case the Agreement shall terminate upon the satisfaction of the Parties' remaining obligations hereunder. The "Effective Date" shall be the later of 1) the first date that this Agreement is signed by an authorized representative of both Parties, or 2) if, for any reason, this Agreement does not or cannot become effective on the first date it is signed by an authorized representative of both Parties, it shall become effective on the first date thereafter that this Agreement may become effective under Wisconsin law. This Agreement shall replace the "status quo" agreement previously entered into by the Town and Village on the Effective Date.

II. **Agreement Procedure.** Prior to approving this Agreement by resolution, the Town and Village held a joint public hearing in accordance with Wisconsin statute §66.0301(6)(c), and the Town and Village provided notice of a pending agreement and public hearing by publishing a class 1 notice and by giving notice to each property owner identified in §66.0301(6)(c)(1) by certified mail at least 20 days before the public hearing, in accordance with Wisconsin statutes §66.0301(6)(c).

III. **Apportionments of Assets and Liabilities.** Unless stated herein, the apportionment of assets and liabilities between the Town and Village shall be determined pursuant to Wisconsin statutes §66.0235.

a. The Apportionment Board, consisting of representatives of the Town and Village, shall convene to begin discussions regarding apportionment of assets between the Town and Village, in accordance with §66.0235.

b. Notwithstanding the foregoing, because the boundary line between the Town and Village will change (by operation of this Agreement) before a proper apportionment of assets and liabilities could be completed by the Apportionment Board, the Apportionment Board shall wait until the new boundary line is established before completing the apportionment process. The post-boundary-line-change areas of the Town and Village, respectively, shall be used to determine the average assessed values of the Town area and Village areas for the preceding five years. After a boundary-change ordinance is adopted, filed, and recorded by the Town under §66.0301(6)(e), the Apportionment Board shall finalize the apportionment process in accordance with §66.0235.

c. Notwithstanding the foregoing, the Parties' obligation to apportion assets and liabilities shall terminate if and when the Town is dissolved, after which all assets and liabilities shall belong to the Village.

d. However, notwithstanding the foregoing subparagraph (b), if the boundary line change contemplated by this Agreement does not occur prior to December 31, 2016 for any reason, the Apportionment Board shall complete its apportionment of assets and liabilities on an interim basis and then reapportion assets and liabilities at such time that the boundary line change referenced in this Agreement takes effect.

IV. Provision of Municipal Services.

a. Public Works. All public works and related services that were previously provided by the Town for the benefit of the Town and/or Village, shall hereafter be provided by the Village for the benefit of the Town and Village. Said public works services shall include, but are not necessarily limited to, road maintenance, snowplowing, ditch and culvert work, wood chipping, signage, minor storm water management projects, mowing, park maintenance, equipment replacement, salting, and other daily and special maintenance.

b. Public Safety. The Village shall provide fire and rescue services to its own property owners and residents and to the Town's property owners and residents. The existing Town of Menasha Police Department is hereby designated and renamed the "Village of Fox Crossing Police Department." The Town of Menasha Fire Department is hereby designated and renamed the "Village of Fox Crossing Fire Department." Ownership of either Departments' assets will be determined by the apportionment procedure stated herein. The police department is hereby designated as a "joint department" pursuant to §61.65. The Village/Town/Department staff and administration is hereby directed to take any steps necessary to effectuate the transfers contemplated in this paragraph. This shall be a continuing duty, as the complete scope of activities necessary to effectuate the transfers contemplated herein are not included in this Agreement. Any current powers of the Town of Menasha Police and Fire Commission are hereby assigned to and assumed by the Village of Fox Crossing Police and Fire

Commission. Any powers currently held by the Town of Menasha Town Board concerning police and fire protection are hereby assigned to and assumed by the Village Board of Trustees. The Police and Fire Commission is addressed in greater detail below.

c. Refuse and Recycling Services. The Town is presently a party to a contract with a private contracted service providing refuse and recycling services to property owners and residents. Said contract shall continue in force and effect for the duration of its term. When said contracts expire, the Town and Village shall jointly negotiate a new contract with a third party of their choosing or may elect to provide refuse and recycling services by any other means.

d. Parks. The Village shall be responsible for the maintenance and upkeep of all public parks located in the Town and Village.

e. Administrative Employees and Staff. Beginning on the Effective Date, the Town and Village shall share all employees and administrative staff, including, but not limited to, an Administrator/Village Manager and Community Development Director. Said employees and administrative staff shall be employed by the Town but shall serve for the benefit of the Town and Village from the effective date of this Agreement until December 31, 2016. On January 1, 2017 (or sooner, if the Town is dissolved), said employees and administrative staff shall be terminated by the Town and become employed by the Village. Thereafter, said employees and administrative staff shall continue to serve both the Town and the Village. Although said employees and administrative staff shall be employees of the Village for payroll, record keeping, and other purposes, the Town will also proportionally contribute to the total cost of said employees and administrative staff according to the terms herein, and said employees and administrative staff shall serve at the pleasure of both the Village Board of Trustees and the Town Board. In the event that the Town Board and Village Board of Trustees cannot agree on the allocation of time that the Administrator and Community Development Director are spending on Town and Village business, respectively, said time shall be proportionally allocated in accordance with the assessed values of all Town real and personal property versus the assessed value of all Village real and personal property in the prior year. The Town and Village shall attempt to appoint a common clerk and treasurer when practical, and share the cost thereof in accordance with this paragraph. This paragraph is not intended to change or alter the "at-will" or other status of any current employee of the Town when employed by the Village.

f. Payment of Expenses Related to Shared Services and Services Provided by the Town or Village for the benefit of both. Unless otherwise agreed by the Parties, the Town and Village shall be jointly responsible for the cost of all shared services in the nature of public works, public safety, refuse and recycling, parks, administrative staff, and costs resulting from the provision of similar services, as referenced above. The Town and Village shall each pay the proportion of total expenses equal to their respective share of the total assessed value of all real and personal property located in the Town and Village.

g. Capital Expenditures. The cost of any new capital equipment or other asset necessary or useful for the provision of the municipal services contemplated herein, shall be apportioned between the Town and Village in a proportion equal to their

respective shares of the total assessed value of all real and personal property located in the Town and Village.

V. Changes to Boundary Line Between Town and Village.

a. As of August 17, 2016, the boundary line between the Town and Village is as indicated in **Exhibit A**.

b. On or as soon after the Effective Date as practical, the Village shall change the boundary line between the Town and Village so that all or any part of the territory designated as the "Town of Menasha Area Attachment to the Village of Fox Crossing" in **Exhibit B** and described in **Exhibit C** shall transfer from the Town to the Village.

c. If any lands designated as the "Town of Menasha Area Attachment to the Village of Fox Crossing" in **Exhibit B** and described in **Exhibit C** are not available to be transferred on the Effective Date because said lands have previously been annexed by a third-party municipality, said lands shall not be included in said initial transfer, but may be included in a subsequent transfer from the Town to the Village if and when said lands thereafter become available to be transferred.

d. In accordance with §66.0301(6), the Village Board may unilaterally adopt and file one or more ordinances to trigger the boundary line changes referenced herein. Said ordinance shall be filed and recorded immediately (or as soon thereafter as reasonably possible) in accordance with Wisconsin statute §66.0301(6), to put the public and applicable State and local agencies on notice of the boundary-line change between the Town and Village.

e. In accordance with Wisconsin statute §66.1105(4)(gm)(1), this Agreement constitutes a cooperative plan boundary agreement, and the Village will not be prohibited from exercising its TIF powers for a period of three years following the boundary line change.

f. For reasons described in the Recitals, the boundary change referenced herein will result in a remnant Town, which is addressed in Section VI, below.

VI. Town Remnant.

a. For reasons set forth in the Recitals, a Town remnant will remain after the boundary change reflected in Section V, above.

b. The Town and Village Boards agree to cease taking any action to annex or attach the Town remnant to the Village until November 1, 2016, so that the City of Menasha has an opportunity to annex the parcels owned by Positive Ventures, LLC.

c. If the City of Menasha has not annexed the Town remnant on or before November 1, 2016, the Village shall work with the property owner(s) in an effort to annex said Town remnant via other means (outside of this Agreement).

VII. Utility District Commission, Stormwater Utility Commission, Representatives to Grand Chute Menasha West Sewerage Commission, Representative to the Neenah-Menasha Sewerage Commission, Planning Commission, Park Commission, Police & Fire Commission, and Ad Hoc Committees.

Utility District Commission

Whereas, various sanitary districts that once served areas of the Town with water and sewer facilities were dissolved following the creation of the Town of Menasha Utility District (hereinafter the "Utility District") on or about September 13, 1999; and whereas water and sewer service is now provided to the Town and Village and other municipal customers outside of the Town and Village by the Utility District; and whereas, §66.0827(5) provides, in pertinent part, "If a town board establishes a utility district under this section, the town board may, if a town sanitary district is in existence for the town, dissolve the sanitary district. If a sanitary district is dissolved, all assets liabilities and functions of the sanitary district shall be taken over by the utility district....All functions performed by a sanitary district and assumed by a utility district under this subsection remain subject to regulation by the public service commission as if no transfer had occurred;" and whereas, the Public Service Commission has recommended that the Utility District eventually be dissolved and replaced by a new Village of Fox Crossing Water Utility; and whereas neither the Town nor the Village can dissolve the Utility District without the cooperation and agreement of the Utility District's other municipal customers and other contracting parties due to several water service agreements that are currently in place; and, whereas, the Utility District is a party to two separate contracts that allow it and/or a successor entity to send sewerage to the Neenah-Menasha Sewerage Commission plant and the Grand Chute-Menasha West plants, respectively; and whereas, said contracts, as amended, permit the Utility District and/or its successor to appoint Commissioners to said Commissions; and whereas, a Town remnant will continue to exist for a period of time after the jurisdictional transfer contemplated in this Agreement:

Now Therefore, the Town and Village hereby agree to the forgoing:

- a. Ownership and control of the Utility District (and all related assets and liabilities) is hereby transferred from the Town to the Village but the Utility District shall continue to exist in every practical sense and the Utility District shall continue to be bound and adhere to every contract or agreement that it is currently a party to until an agreement with all affected municipalities and other entities is reached to the contrary.
- b. Town and Village officials should immediately cooperate to provide a map of the Utility District's water service area that includes the Village's new boundaries to the Public Service Commission and shall otherwise adhere to any requirement and reasonable request by the PSC.
- c. If and when the Town ceases to exist through a future annexation or jurisdictional change, the Utility District shall continue to exist as an independent entity owned by the Village until such time that the Utility

District is dissolved and replaced by a new Village of Fox Crossing Water Utility by agreement of all necessary parties.

Stormwater Utility Commission

Ownership and control of the Town of Menasha Stormwater Utility is hereby transferred from the Town to the Village. Any assets and liabilities that belong to or are designated to the Town of Menasha Stormwater Utility as an entity continue to belong to the entity. Any assets and liabilities that belong to the Town but that flow directly from the operations of the Town of Menasha Stormwater Utility are hereby transferred from the Town to the Village. The Village Board shall hereafter serve as the Stormwater Utility Commission and the Village's Director of Community Development is hereby authorized to administer and enforce all rules and ordinances concerning the Town of Menasha Stormwater Utility. Chapter 35 of the Town of Menasha Code of Ordinances is hereby expressly incorporated by reference into the Village's ordinances, except for any changes made necessary by this paragraph. The Town and the Village shall cooperate to take all steps necessary to document, apply for, and approve this change with any regulatory body, lending institution, and other appropriate entity.

Representatives to Grand Chute Menasha West Sewerage Commission

The Village and the Town agree that the representatives to the Grand Chute Menasha West Sewerage Commission shall consist of two (2) members of the Utility District Commission and the Village President; if and when said Utility District Commission is dissolved, two representatives shall be appointed by the governing body of a new Village of Fox Crossing Water Utility and a third member shall be the Village President.

Representatives to the Neenah-Menasha Sewerage Commission

The Village and Town agree that the current representative Commissioner to the Neenah-Menasha Sewerage Commission shall continue in this role following the effective Date of this Agreement. The Utility District Commission President shall appoint a successor upon the resignation, removal, or termination of the current term, to be approved by the remaining members of the Utility District Commission, and subject to the rules of the Neenah-Menasha Sewerage Commission.

Police & Fire Commission

a. The Village of Fox Crossing Police & Fire Commission is hereby created. Said Commission shall consist of four Commissioners and a Chairperson to be appointed by the Village President and confirmed by the Village Board and Town Board (while the Town Board remains in existence). The initial Commissioners and Chairperson shall be the current Commissioners and Chairperson of the Town of Menasha Police and Fire Commission, who shall serve out their current terms. No Village Board member or Town Board member may serve on the Police & Fire Commission.

b. All other existing rules of the Town of Menasha Police and Fire Commission are hereby adopted as the rules of the Village of Fox Crossing Police and Fire Commission.

Parks Commission

A Board of Park Commissioners to be known as the "Village of Fox Crossing Park Commission" is hereby created by the Village. The Village of Fox Crossing Park Commission shall initially consist of all current members of the Town of Menasha Park Commission. The Town of Menasha Park Commission is hereby dissolved. The Village of Fox Crossing Park Commission shall have the powers designated in §27.08 with respect to all public parks, except that "common council" shall mean "Village Board." "Public parks" shall refer to all publicly owned and publicly open parklands within the Village and Town and the Community Center; sidewalks of the Village and the Town greater than 8' in width consisting of asphalt, concrete, stone aggregate, and/or natural material located along road right-of-ways within the Village or Town; transportation easements within the Village or Town; and designated environmental corridors located within the Village or Town.

Plan Commission

The current Plan Commissioners for the Town shall serve their remaining terms and the Town Plan Commissioners are hereby also designated as the Plan Commission for the Village. When the Town and Village Plan Commissioners' current terms expire, subsequent appointments shall be made in accordance with applicable ordinances and statutes.

Ad Hoc Committees

The Town Board Chairman and Village President, by agreement, may establish additional ad hoc committees as used for or necessary to accomplish the subject matter contained in this Agreement.

VIII. Modification. This Agreement may be modified by the mutual agreement of the Town and Village.

IX. Construction of Agreement. Any court of competent jurisdiction that is interpreting and reviewing this Agreement, shall review it in the context that most favors enforceability. All provisions of this Agreement are severable. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall survive. However, if the boundary change contemplated herein is held invalid by a court of competent jurisdiction, either party may provide notice to the other party of its intent to cancel the balance of this Agreement; 30 days after the provision of said notice, this Agreement shall be canceled and the parties shall revert to the Status Quo Agreement (that preceded this Agreement) until a new agreement can be negotiated by the parties.

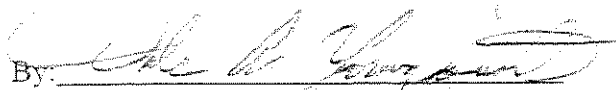
X. Opt-Out Provision. If the Boundary change referenced in Section V of this Agreement does not occur prior to December 31, 2016, either party may cancel this Agreement upon 30 days' notice to the other party. In the event of any such cancelation, the Parties shall

revert to the temporary "status quo agreement" that was in effect prior to the Effective Date of this Agreement.

The below-signed authorized individuals certify that this Intergovernmental Cooperation Agreement has been duly approved by a "resolution" of their respective governing bodies in accordance with state and local laws, rules and regulations, and that each has caused their duly authorized officers to execute this Agreement on the dates written before their respective signatures.

Dated: 8/17/2016

VILLAGE OF FOX CROSSING,
a Wisconsin municipal corporation

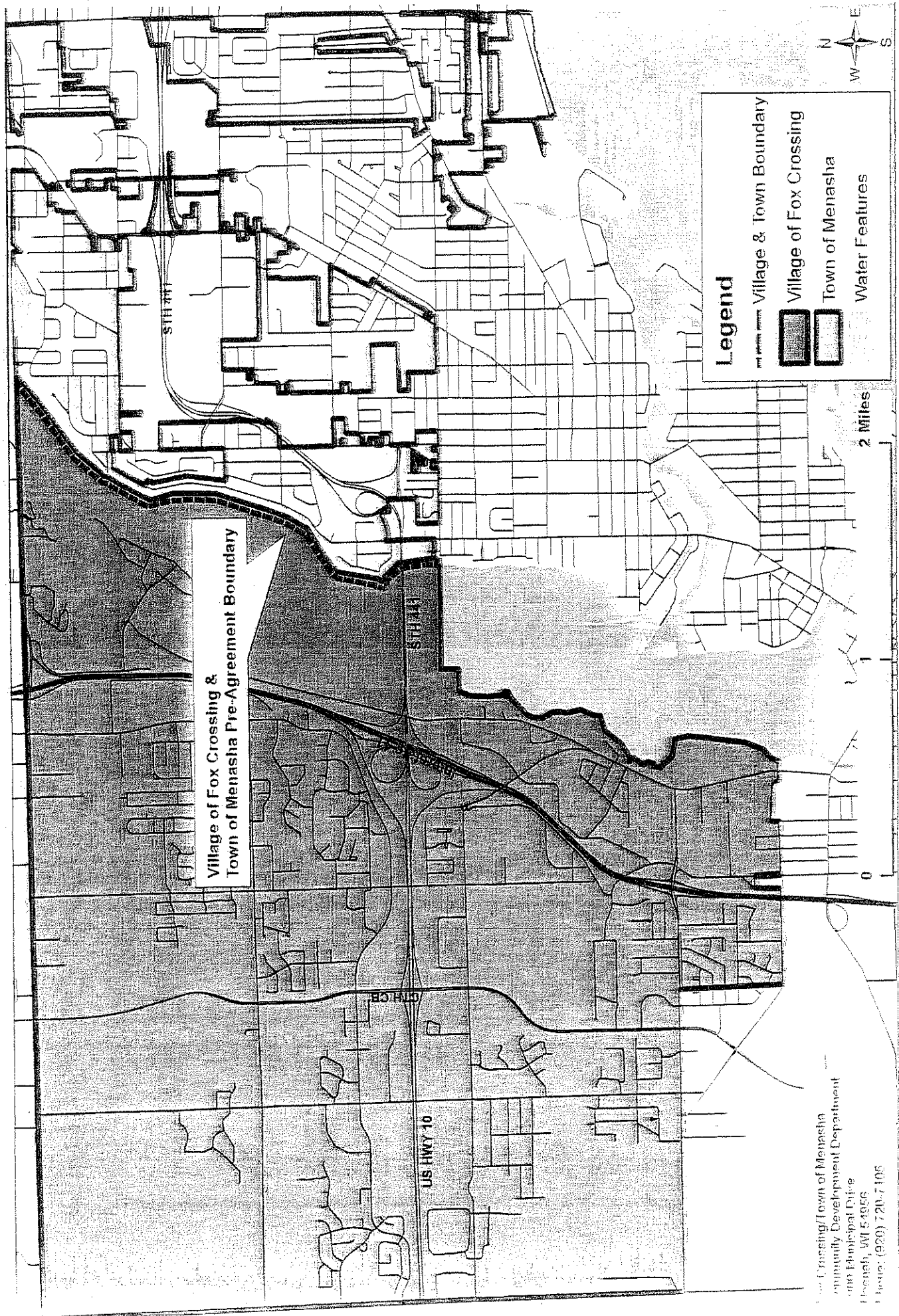
By: 
Dale A. Youngquist, Village President

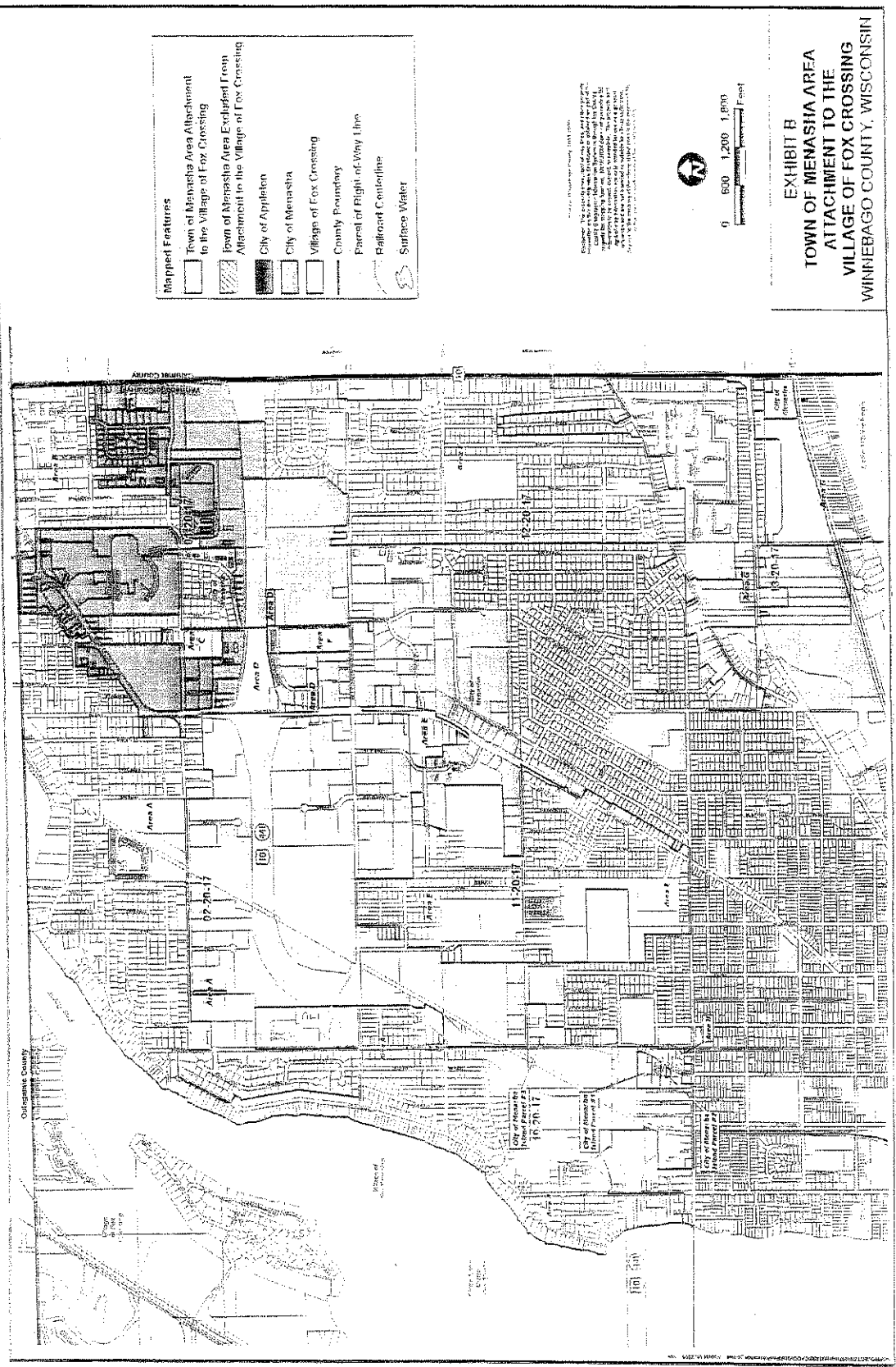
Dated: 8/17/2016

TOWN OF MENASHA,
a Wisconsin Town

By: 
Barbara J. Hanson, Town Chairman

Exhibit A





- Mapped Features**
- Town of Menasha Area Attachment to the Village of Fox Crossing
 - Town of Menasha Area Excluded from Attachment to the Village of Fox Crossing
 - City of Appleton
 - City of Menasha
 - Village of Fox Crossing
 - County Boundary
 - Parcel of Right of Way Line
 - Railroad Centerline
 - Surface Water

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0 600 1,200 1,800 Feet

EXHIBIT B
TOWN OF MENASHA AREA
ATTACHMENT TO THE
VILLAGE OF FOX CROSSING
WINNEBAGO COUNTY, WISCONSIN